IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 19576 of 2003

Between:

Donthala Haranath Reddy, S/o. Ramalinga Reddy,
R/o. Rettapalli Village, Chillakur Mandal,
Nellore District.

..... PETITIONER

AND

1 The Joint Collector,
Nellore.
2 The Revenue Divisional Officer,
Gudur.
3 The Mandal Revenue Officer,
Chillakur Mandal, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, writ or direction more particularly a Writ of Mandamus Under Article 226 of Constitution of India, declaring the order passed by the then Tahasildar, Gudur in his proceedings RCB.3/4847/79, dated 6-03-1980 canceling the assignment granted in favour of the petitioner's mother in the year 1968 and the order passed by the 2nd Respondent in his proceedings D.Dis.No. 4549/85, dated 20.06.2002 on the ground that the Legal Representatives did not come one record and the order passed by the 1st respondent in his proceeding D.Dis.(E8)7712/2002, dated 14.07.2003 dismissing the appeal for default as illegal, arbitrary, without jurisdiction and violative of principles of natural justice consequently set aside the said orders and pass

Counsel for the Petitioner:MR.P.SRIDHAR REDDY

Counsel for the Respondent No.: GP FOR ASSIGNMENT

The Court made the following :

O R D E R:

This writ petition is filed by Donthala Haranath Reddy with a prayer to issue an order, more particularly a Writ of Mandamus, declaring the order passed by the Tahsildar, Gudur in his proceedings R.C.B.3/4847/79, dated 06-03-1980 canceling the assignment of the land granted in favour of the petitioner's mother in the year 1968 and the order passed by the 2nd respondent-Revenue Divisional Officer in his proceedings No.D.Dis.No.4549/85, dated 20-06-2002 and subsequent proceedings passed by the 1st respondent-Joint Collector, Nellore in his proceedings D.Dis (E8)7712/2002, dated 14-07-2003 dismissing the appeal for default as illegal, arbitrary, without jurisdiction and violative of principles of natural justice.

2. Smt.Donthala Ramanamma the petitioner's mother was assigned Ac.3.59 cents of dry land in Survey No.1/5 of Kadivedu village in the year 1968. She has seven sons. The writ petitioner is one among them. A show cause-notice was issued to D.Ramanamma by the Tahsildar, Gudur calling upon her to explain as to why the land should not be resumed to Government. The show cause notice was served on Smt.D.Ramulamma on 26-11-1999. She submitted explanation to it on 26-12-1979. She contended before the Tahsildar, Gudur that she has been personally cultivating the land and she has not alienate the land to others. The Tahsildar, Gudur, in his proceedings No.4847/79, dated

6-3-1980, on considering the material on record, recorded a finding that Smt.D.Ramanamma violated the conditions of grant and thereby ordered resumption of the land to the Government. Assailing the order, Smt.D.Ramanamma filed an appeal before the Revenue Divisional Officer, Gudur. Pending the appeal Smt.D.Ramanamma died and the appeal filed by her ended in dismissal on the ground that her LRs did not express any interest to come on record and continue the appeal. The writ petitioner who is the son of deceased Smt.D.Ramanamma filed

revision petition before the Joint Collector, Nelloor, assailing the order of the Revenue Divisional Officer. The revision underwent many adjournments and ultimately it came to be dismissed for non-prosecution. Hence, this writ petition questioning the resumption of land to the Government.

3. The learned counsel for the writ petitioner submits that the very ground on which the proceedings for resumption of the land have been initiated is unsustainable and therefore, the orders passed by the Thasildar, Gudur, Revenue Divisional Officer, Gudur and Joint Collector, Nellore are not legal and proper and the same are liable to be set aside. He further contends that the writ petitioner waited before the Joint Collector, Nellore, in connection with the review filed against the orders of the Revenue Divisional Officer, but the Joint Collector did not take up any proceedings on 31-05-2003 and thus the order passed by the Joint Collector is in violation of principles of natural justice.

4. He would further contend that the cultivation of lands by the writ petitioner being the son of original assignee/Smt.D.Ramanamma does not amount to violation of the conditions of assignment and thus the proceedings initiated by the Thasildar for resumption of land are unsustainable.

5. The learned Government Pleader for Assignment appears for respondents 1 to 3 submits that Smt.Ramanamma got the land assigned suppressing the material and therefore the Tahsildar, Gudur was justified in initiating the proceedings for resumption of the land.

6. The only question that arises for consideration is whether the ground on which proceedings have been initiated for resumption of land is illegal and proper.

7. It would be appropriate to refer to Para 12 (3) of the A.P Board Standing Order No.15, which enumerates the conditions of assignment, breach of which results in cancellation of patta.

> "(3) Terms and conditions of assignment:-
>
> The assignment of lands shall be subject to the following conditions:

a. Lands assigned shall be heritable but not alienable.

b. Lands assigned shall be brought under cultivation within three years.

c. No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with Government water; and

d. Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family"

8. The writ petitioner is the son of assignee Smt.D.Ramanamma. As per clause (d) of Para 3 of the Board Standing Order 15, the cultivation of assigned land can be by the assignee or the member of the family. Therefore, cultivation of the assigned land by the writ petitioner who is the son of the assignee is not in contravention of the conditions of the assignment.

9. It is contended by the learned Government Pleader appearing for the respondent that Smt.D.Ramanamma suppressed the material facts and obtained assignment and therefore the Tahsildar was justified in initiating the proceedings for resumption of the land. In other words, it is contended that Smt.D.Ramanamma was ineligible for assignment of any Government land. The report sent by Tahsildar, Gudur, has been considered by the Sub-Collector it is stated by Thasildar that the actual holding of Smt. D.Ramanamma as on the date of assignment was not known. Such is the situation, it cannot be said that Smt.D.Ramanamma was ineligible for assignment of any Government land in the year, 1968. Therefore, the ground on which proceedings have been initiated for resumption of land is not legal and proper.

10. Thus, the writ petition is allowed, setting aside the proceedings initiated by the Tahsildar for cancellation of the assignment of land in Survey No.1/5 of Kadivedu village granted in favour of Smt.D.Ramanamma and subsequent proceedings passed by the Revenue Divisional Officer, Gudur and Joint Collector, Nellore. No costs.

21st June, 2005.

mrb

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday the Twenty First Day of June, Two thousand and Five

To

1 The Joint Collector, Nellore.
2 The Revenue Divisional Officer, Gudur.
3 The Mandal Revenue Officer,
Chillakur Mandal, Nellore District.

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